IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

No. 941

THE HONORABLE J. SAM PERRY, JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION,

Petitioner,

vs.

ROSS M. MADDEN, REGIONAL DIRECTOR FOR THE THIRTEENTH REGION OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD.

Respondent.

REPLY TO BRIEF IN OPPOSITION.

MOZART G. RATNER,
Attorney for Petitioner.

JACOBS AND RATNER,
201 North Wells Street,
Chicago 6, Illinois,
Of Counsel.

THE BURTHORP-WARREN PRINTING COMPANY, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

No. 941

THE HONORABLE J. SAM PERRY, JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION,

Petitioner,

vs.

ROSS M. MADDEN, REGIONAL DIRECTOR FOR THE THIRTEENTH REGION OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD,

Respondent.

REPLY TO BRIEF IN OPPOSITION.

Respondent asserts that the court below granted mandamus because it concluded that entry of the supplemental findings and conclusions was "inconsistent with its intention in disposing of the appeal". (Br. op. pp. 2, 9, 10, 13-14.) Respondent urged the court below to adopt that theory—to construe its dismissal of the appeal as an adjudication of the case. Respondent argued that: "although phrased in terms of a dismissal of the appeal, its intended effect was a determination of the merits of the appeal. We believe that the Court meant by its action to effect a

dismissal of the entire proceeding." Reply Memorandum in Support of Petition for Mandamus, p. 3.*

The court below, however, declined respondent's invitation so to interpret its intention in dismissing the appeal. Its opinion makes plain that the only order which was directed to, or was intended to affect, the final disposition of the case was Judge Perry's order. The opinion states (Pet. 32), that Judge Perry's order was final when it was entered and that it remained so after the appeal from it was dismissed. Manifestly, the court below at no time regarded the dismissal of the case as having been altered or affected by the subsequent disclosure, at the Court of Appeals stage, of the flaw in the Regional Director's investigation. The opinion below is directed entirely toward the effect of Judge Perry's dismissal of the injunction petition upon his exercise of post-decree powers. If the Court of Appeals had regarded its own dismissal of the appeal as having foreclosed him from entering the supplemental findings and conclusions it would certainly have said so. Instead, it predicated its conclusion that Judge Perry had no right to enter the supplemental findings exclusively upon the terms of Judge Perry's own findings and dismissal order, and its conclusion that mandamus was the appropriate remedy (Pet. 36), not on the theory that it was necessary to compel compliance with the appellate mandate, but only on the unavailability of appeal.

Respondent's assumption that the opinion of the Court of Appeals explaining its dismissal of the appeal was intended to supersede Judge Perry's order as the operative adjudication in the case is refuted by the opinion itself which shows that it was directed to and provoked by the Board's earlier applications to the Court of Appeals and to the district court for emergency temporary restraining

---

*We have requested the Clerk of the Court of Appeals to forward a certified copy of that Memorandum to this Court.

orders. (Pet. 20-21.) These, of course, were not the subject of the appeal.

In short, the court below held that mandamus should issue on the grounds set forth in its opinion and discussed in the petition for certiorari, not on an artificial hypothesis of respondent's devising as to the court's intentions in its earlier opinion.

The questions actually presented as set forth in our petition warrant review by this Court.

Respectfully submitted,

MOZART G. RATNER,
Attorney for Petitioner.

JACOBS AND RATNER,
201 North Wells Street,
Chicago 6, Illinois,
Of Counsel.